IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1477 OF 2006

Lake View Co.Op.Housing Society Ltd. .. Petitioner

Versus

State of Maharashtra .. Respondent.

Mr.Peter Lobo for the petitioner.

Mr.R.M.Patne, A.G.P. for the respondent Nos. 1 and 2.

CORAM : R.C. CHAVAN, J.

DATE : 13TH APRIL, 2007.

P.C.:

1. The petitioner-society has challenged the order passed u/s.154 of the Maharashtra Co-Operative Societies Act, 1960 by the Government upholding order of the Joint Registrar, Co-Operative Society u/s.23 (2) of Maharashtra Co-Operative Societies Act, 1960.

2. I have heard Mr.Peter Lobo, the learned counsel for the petitioner-society and the learned A.G.P. for respondent Nos.1 and 2. The facts which can be gathered are as under : -

3. The property in question was developed by CIDCO and tenements were allotted to various persons including respondent No.3's predecessor in title Vijay Kumar Sethi. CIDCO as chief promoter of cooperative society of several owners, had moved the Registrar for registering the society. Before the society could be registered, Vijay

Kumar Sethi transferred his interest to respondent No.3 Krishna Lalit Suri. Thereafter the transferor and the transferee obtained requisite permission from the CIDCO. The respondent No.3 applied for being joined as a member of the society. The society pointed out certain deficiencies in the application. Without complying with those deficiencies, the respondent No.3 again applied to the society in the year 2003 and then approached the Joint Registrar of Co-Operative Society- respondent No.2 u/s.23(2) of the Maharashtra Co-operative Societies Act. The Joint Registrar by his order dated 10th November, 2003, allowed the application of respondent No.3 on certain conditions, namely, that the society should not recover transfer charges from the disputant, and that the disputant should pay occupancy charges from 5th January, 2001 i.e. the date of registration of society.

4. Being aggrieved by the order dated 10th November, 2003 passed by the Asst.Registrar Co-Op.Society, CIDCO u/s.23(2) of the MCS Act, the petitioner-society preferred a revision application u/s.154 of the MCS Act which application came to be dismissed by an order dated 29th February, 2004 which is impugned in this petition.

5. The main grievance of the learned counsel for the petitioner is that the impugned order, which confirms the

order of the Joint Registrar, would prevent the society from recovering the occupancy charges prior to 5th January, 2001 i.e. the date of registration of society. He submits that this Court in **P.Zaveri & Ors. v. Pannalal Manguram reported in INDIAN LAW REPORTS 1976 Pg.182** had held that even prior to the registration of the society, society would be entitled to enforce the obligations existing between the members and the proposed society. According to the learned counsel, the predecessor of respondent No.3 had paid the occupancy charges from 1995 to 1999. So the dispute relates to charges from 1999 to 2001.

6. The question as to whether the respondent No.3 is liable to pay occupancy charges before 5th January, 2001 cannot be and should not have been a subject matter of the proceedings before the Joint Registrar u/s.23(2) of the Maharashtra Co-Operative Societies Act. The question before him was restricted to entitlement of respondent No.3 for enrollment as a member of the society, and the conditions imposed by the learned Joint Registrar in his order have to be read in the context of the application for enrollment as a member of the society. The Registrar must be understood to have held that recovery of occupancy charges prior to 5th January, 2001 cannot be a condition precedent for enrollment of respondent No.3 as a member

and nothing more than this. The question of entitlement of society to recover the occupancy charges prior to 5th January, 2001 could be independently agitated by the society before the appropriate forum.

7. In view of this, the petition is misconceived. The petitioner must comply with the orders passed by the Joint Registrar of Co-Operative Societies and confirmed in revision by the government, since these orders merely prevent the petitioner from insisting upon recovery of occupancy charges prior to 5th January, 2001 as a condition precedent for enrollment of respondent No.3 as a member of the society.

8. The petition is, therefore, disposed of in the above terms.

(R.C. CHAVAN, J.)